

July 18, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: Bemer Petroleum Corporation

Date of Filing: April 18, 2007

Case Number: TEE-0044

On April 18, 2007, Bemer Petroleum Corporation (Bemer) of Glastonbury, Connecticut, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Bemer requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers/Retailers’ Monthly Petroleum Product Sales Report” (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

I. Background

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.² All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. Thus, the continuity

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

² A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants. EIA examines the data that these companies submit more closely and considers these data more instructive in gauging market trends than data submitted by smaller firms. In an effort to minimize the burden of preparing the form, EIA permits firms to rely on reasonable estimates.³

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”⁴ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁵ Neither does the fact that a firm is relatively small or has filed reports for a number of years constitute a hardship warranting relief.⁶ If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.⁷

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;⁸ the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;⁹ extreme or unusual circumstances disrupt a firm’s activities;¹⁰ or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.¹¹

³ The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from the actual data.

⁴ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

⁵ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

⁶ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

⁷ *Id.*

⁸ *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

⁹ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

¹⁰ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

¹¹ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

III. The Application for Exception

Bemer filed its Application for Exception in April 2007.¹² Based upon a review of the application, we concluded that there was insufficient information to allow us to act favorably on the request. Consequently, we contacted Bemer to provide the firm an opportunity to submit more information regarding its Application.¹³

Bemer, located in Glastonbury, Connecticut, is a distributor of propane. In its Application for Exception, Bemer requests temporary relief from the EIA reporting requirement on the grounds that the requirement is burdensome to the company at this time.¹⁴ Bemer states that it has recently been involved in a legal dispute with its former office manager whose employment was terminated. According to Bemer, the office manager was the person responsible for completing Form EIA-782B, but she failed to carry out her duties and, as a result, the company is significantly behind in the processing of the form and other documents pertaining to the company's accounts.¹⁵ Bemer states that it is currently working to sort through the backlog and is working with a computer technician to develop a program that will break down its sales data but that, at present, it is unable to generate accurate reports. For example, Bemer maintains that it is unable to distinguish its residential sales from its commercial sales for reporting purposes.¹⁶

IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.¹⁷ In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms. As stated above, in the case of a certainty firm, this showing must be compelling, because of the significance of the data collected.

In this case, Bemer has not made the showing necessary to warrant exception relief. Bemer's argument essentially is that the firm does not have the time to complete the form because of various issues related to the dismissal of its office manager. As explained below, a disruption in business operations resulting from the departure of an employee is not by itself sufficient to indicate that the firm is adversely affected to a significantly greater degree than other firms.

Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. Bemer has not given a compelling explanation for why it does not have accurate volume and pricing data. As a functioning business, Bemer is surely aware of its propane output and pricing. Furthermore, Bemer's argument that it is unable to accurately break down its data for the form, including distinguishing between residential and commercial sales, is unpersuasive. Even if Bemer is not able to produce a precise breakdown of

¹² Letter from David D. DeTuccio, Jr., Bemer, to Jennifer Smith, EIA (March 15, 2007; received by OHA April 18, 2007) (Application for Exception).

¹³ See Memoranda of Telephone Conversations between David D. DeTuccio, Jr., Bemer, and Diane DeMoura, OHA (May 11, 2007 and June 20, 2007).

¹⁴ *Id.*; see also Application for Exception.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

its sales, Bemer has not provided any reason that it cannot make reasonable estimates in completing Form EIA-782B.¹⁸

As stated above, the EIA relies heavily on the market data collected from certainty firms such as Bemer. While we can appreciate that Bemer is currently experiencing some difficulties, the reliability of the reporting sample would be compromised if we were to grant an exception to all firms – particularly certainty firms – experiencing heavy workloads or other issues associated with maintaining a business.

As the foregoing discussion demonstrates, Bemer has not shown that the requirement to complete Form EIA-782B is burdensome to the company in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, Bemer's Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Bemer Petroleum Corporation, Case No. TEE-0044, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: July 18, 2007

¹⁸ EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507; *see also* Section 7 of the General Instructions to Form EIA-782B.